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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,717	03/09/2001	Seiji Kobayashi	2001_0277A	5096
513	7590	07/06/2005	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			RHODE JR, ROBERT E	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			3625	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/801,717	Applicant(s) KOBAYASHI, SEIJI	
	Examiner Rob Rhode	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4-18-05 has been entered.

Response to Amendment

Applicant amendment of 4-4-05 amended claim 1 and canceled claim 2 as well as traversed rejections of Claims 1 - 3.

Currently, claims 1 and 3 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the 4th function, which begins with "a means for adjusting" as currently worded, makes the determination of the metes and bounds of the

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claim almost impossible. It appears to be a literal translation into English from a foreign document. For examination purposes, this portion was interpreted to be the ability of an evaluator to adjust weights of standard questions (mean data) used by a company in an employee evaluation process.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are the system components to carry out the “means for” statements. Currently, applicant recites a program on a personal computer, which necessitates corresponding and supporting structure to carry out the “means for” functions.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. The applicant in the preamble has a program on a personal computer and in the body of the claim, which recites “means for” language. In that regard, the specification only recites the equations and calculations without any disclosure of supporting structure. Thereby, the claim is not statutory.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 3 rejected under 35 U.S.C. 103(a) as being unpatentable over “P & Q Review!” Getting started Guide; June, 1995 (hereafter referred to as P & Q”) in view of “The “Refined” Performance Evaluation Monitoring System: Best of Both Worlds”; Schick, Melvin E, Personnel Journal; Santa Monica; Jan. 1980 (hereafter referred to as “Refined”).

Regarding claim 1, P & Q teaches a personnel valuation program for permitting a personal computer to function as:

a means for setting a valuatee group of valuatees to be valuated as a subject of personnel valuation, valuator group of valutors for performing valuation corresponding to the valuatee group and a valuation item group, as items of valuation,

a means for setting one or more reference valutors from the valutors in the valuator group as at least one reference data valuator;

a means for inputting valuation data of the valuatees by all the valutors in the valuator group including the at least one reference data valuator as initial valuation data;

a means for adjusting the initial valuation data by the valutors in the valuator

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group, which allows an evaluator to adjust weights of standard questions (mean data) used by a company in an employee evaluation process (see at least pages 4 – 8, 11 – 13, 15 –12).

While P & Q does disclose providing the capability to compare evaluators, P & Q does not specifically disclose and teach a means for setting weight data of valuator for weighting the valuation data in dependence on posts of the valuator in the valuator group indicating an ability to do appropriate valuation.

On the other hand and in the same area of personnel valuation, Refine teaches a program with means for setting weight data of valuator for weighting the valuation data in dependence on posts of the valuator in the valuator group indicating an ability to do appropriate valuation (page 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the program of P & Q with the program of Refine to have enabled a program with means for setting weight data of valuator for weighting the valuation data in dependence on posts of the valuator in the valuator group indicating an ability to do appropriate valuation – in order to ensure an appropriate scoring of employees by different supervisors who may be tougher on employees. P & Q discloses a personnel valuation program, which includes a means for a means for setting a valuatee group of valuatees to be valuated as a subject of personnel valuation, valuator

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group of valuator for performing valuation corresponding to the valuatee group and a valuation item group, as items of valuation, a means for setting one or more reference valuator from the valuator in the valuator group as at least one reference data valuator; a means for inputting valuation data of the valuatees by all the valuator in the valuator group including the at least one reference data valuator as initial valuation data; a means for adjusting the initial valuation data by the valuator in the valuator group, which allows an evaluator to adjust weights of standard questions (mean data) used by a company in an employee evaluation process (see at least pages 4 – 8, 11 – 13, 15 – 12). In turn, Refine discloses a personnel program with means for setting weight data of valuator for weighting the valuation data in dependence on posts of the valuator in the valuator group indicating an ability to do appropriate valuation (page 1). Thereby, one of ordinary skill in the art would have been motivated to extend the program of Refine with a program with means for setting weight data of valuator for weighting the valuation data in dependence on posts of the valuator in the valuator group indicating an ability to do appropriate valuation. In this manner, the significance and balance of the evaluations will be a more effective representation of the employee's performance across multiple evaluators, which will ensure a higher degree of fairness for the employee in their evaluation.

Regarding Claim 3 (Previously Presented), P & Q teaches a personnel valuation program, wherein the reference data valuator are selected for obtaining appropriate personnel valuation data, and the valuation data set by the reference data valuator is

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performed with respect to the valuation data of all of the valuatee group about all the valuation items (Page 12).

Response to Arguments

Applicant's arguments with respect to claims 1 and 3 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is 6,338,042 B1 and 5,909,669, which each disclose a personnel evaluation method and system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **571.272.6761**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **571.272.7159**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

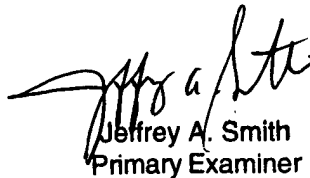
(703) 872-9306 [Official communications; including
After Final communications labeled
"Box AF"]

(703) 746-7418 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). RER


Jeffrey A. Smith
Primary Examiner